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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
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9 *In re LinkedIn ERISA Litigation*
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Case No: 5:20-cv-05704-EJD

Hon. Judge Edward J. Davila

**DECLARATION OF LAURIE
RUBINOW IN SUPPORT OF
PLAINTIFFS' UNOPPOSED
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
AND AWARDS OF ATTORNEYS'
FEES, EXPENSES, AND CLASS
CONTRIBUTION AWARDS**

Fairness Hearing: November 16, 2023
9:00 a.m.

1 I, Laurie Rubinow, hereby declare under penalty of perjury under the laws of the United
2 States as follows:

3 1. I am a Partner with the law firm Miller Shah LLP (“Miller Shah” or “Class
4 Counsel”). I am admitted to practice law in the States of Connecticut and New York and the
5 Commonwealth of Pennsylvania, and I am one of the attorneys who has worked on the above-
6 captioned action (the “Action”) since the initial pleadings stage. I have personal knowledge of
7 the facts set forth herein.

8 2. Following entry of the Court’s Preliminary Approval Order, Gallagher Fiduciary
9 Advisors, LLC (“Gallagher”) was selected and appointed as an independent fiduciary for the Plan
10 in connection with the Settlement and was provided with sufficient information to allow for a
11 comprehensive review of the Settlement, including the relevant pleadings and papers filed on the
12 docket, certain discovery materials, confidential settlement documents, and any other materials
13 requested. In addition, counsel for the Parties each participated in virtual meetings with Gallagher
14 to review certain matters related to the litigation and Settlement, and the Parties answered follow
15 up questions from Gallagher. Gallagher has extensive experience reviewing settlements
16 involving ERISA plans. Gallagher has issued a report authorizing the Settlement on behalf of the
17 Plan, which will be filed on the docket this action on or before October 26, 2023.

18 3. During the course of this litigation and the settlement negotiations, the parties
19 exchanged information sufficient to enable counsel to evaluate the strength of the claims and risks
20 of continued litigation. Specifically, Defendants produced and Plaintiffs and Class Counsel
21 reviewed relevant documents and communications reflecting the relationships between and
22 among fiduciaries, Defendants’ management and administration of the Plan, and Defendants’
23 process for monitoring the Plan’s investments and service providers. These documents included
24 chartering documents of the fiduciary committee, the Plan’s investment policy statements during
25 the Class Period, minutes of fiduciary committee meetings, materials provided to the fiduciary
26 committee to support its decision-making, disclosures by service providers, and disclosures made
27 to participants in the Plans. In addition, Plaintiffs have taken depositions of fact witnesses and
28 both parties disclosed expert reports. Prior to reaching the Settlement, the parties also

1 communicated their respective positions concerning Plaintiffs' likelihood of success on their
2 claims and potential recovery on behalf of the Plan, conducted independent analyses to support
3 their claims and defenses and evaluate potential resolutions, and participated in a mediation on
4 September 15, 2022. The Settlement was reached in the weeks following the mediation session,
5 under the continued guidance of the mediator. There has been no collusion or complicity of any
6 kind in connection with the Settlement reached in this case or any related negotiations.

7 4. The Settlement Agreement represents the culmination of intensive arm's-length
8 negotiations with the assistance of the mediator, Robert A. Meyer, Esquire, of JAMS, a well-
9 respected and experienced neutral mediator whom the Parties met with formally and informally
10 on several occasions. Plaintiffs were represented in the Settlement negotiations by a team of
11 attorneys with considerable experience in ERISA litigation, who have engaged extensively in fact
12 discovery in this case, and who are, therefore, well-versed in the legal and factual issues.
13 Defendants were similarly represented by counsel with extensive experience defending complex
14 litigations, including ERISA class actions. The settlement negotiations were contested and
15 conducted in good faith.

16 5. As noted in connection with seeking preliminary approval of the proposed
17 Settlement in this case, Class Counsel have significant experience in similar litigation, and are
18 well-informed as to the specifics of this litigation. Class Counsel's thorough investigation,
19 coupled with the significant document discovery conducted in the litigation, has afforded them
20 with a comprehensive understanding of the merits of the claims asserted, the strength of
21 Defendants' defenses, and the values of theoretical outcomes. In addition, Class Counsel have
22 engaged in extensive consultation with experts in assessing the claims, defenses, and potential
23 damages in connection with their negotiation of the Settlement.

24 6. Miller Shah and its co-counsel, Capozzi Adler, P.C., have fully investigated and
25 developed this action, reviewed significant discovery, worked with experts, and engaged in
26 motion practice to properly and vigorously represent the interest of the Plan and the Class, and
27 are prepared to litigate the case through its resolution.

28 7. Plaintiffs have actively participated in the litigation from the outset and assisted

1 Class Counsel in drafting the pleadings and other papers filed in the Class Action, consulted with
2 Class Counsel as needed, answered discovery requests, provided additional information,
3 participated in strategy and settlement discussions with Class Counsel, and otherwise assisted in
4 representing the interests of the Plan and its participants and beneficiaries. Plaintiffs also
5 participated in regular conference calls with Class Counsel to ensure they remained fully apprised
6 of all developments in the Action. Plaintiffs fully understand the nature of their claims, as well
7 as their duties and responsibilities as Class Representatives and to the Plan, and they have no
8 interest antagonistic to the Plan or members of the Settlement Class.

9 8. Based on a review of the docket in this action and confirmation with Strategic
10 Claims Services, to date, no members of the Settlement Class have filed purported objections to
11 the Settlement, or the requested attorneys' fees, expenses, and service awards. Class Counsel
12 have fielded numerous calls and responded to correspondence from Settlement Class members to
13 provide information regarding the Settlement and claims process, and none have voiced any
14 opposition to the Settlement. In fact, many members of the Settlement Class with whom Class
15 Counsel have been in touch have communicated positive feedback about the Settlement.

16 9. The Notice to the Class provided that Class Counsel may apply for an award of
17 attorneys' fees not to exceed one-third of the Settlement Fund, as well as expenses not to exceed
18 \$150,000. Class Counsel are seeking attorneys' fees of one-third of the Settlement Fund and
19 expenses in the amount of \$119,386.02, which were reasonably and necessarily incurred in
20 litigating the Action.¹ Class Counsel estimate that they will incur certain additional expenses
21 related to settlement administration based upon past experience in similar cases, for which no
22 amount of reimbursement is sought. Despite prosecuting this litigation for over three years, Class
23 Counsel have not received any payment for their services or expenses incurred for prosecuting
24 the Action.

25
26 ¹Miller Shah does not seek reimbursement of any travel expenses incurred in connection with its
27 representation of the Settlement Class, despite actually incurring such expenses in the course of
28 this litigation.

1 10. The requested fee award of one-third of the Settlement Fund is consistent with the
2 amount negotiated by Plaintiffs and Class Counsel as the fee that could eventually be sought in
3 connection with settlement approval, and is well within the range of fees awarded by courts in
4 this District, as well as throughout the country.

5 11. Class Counsel achieved this highly favorable result for the Class at significant risk
6 and substantial expense. Class Counsel were unwavering in their dedication to the interests of
7 the Class and their investment of the time and resources necessary to bring this action to a
8 successful conclusion against the Defendants. Class Counsel's compensation for the services
9 rendered has always been wholly contingent. The requested fee is reasonable based on the quality
10 of Class Counsel's work and the substantial benefit obtained for the Class.

11 12. For their extensive efforts on behalf of the Class, Class Counsel is applying for
12 compensation from the Settlement Fund on a percentage-of-the-fund basis, and seeks the Court's
13 approval of the same. The percentage-of-the-fund method is the appropriate method of
14 compensating counsel because, among other things, it aligns Counsel's interests in being paid a
15 fair fee with the interests of the Class in achieving an optimal resolution under the circumstances.
16 In addition, the percentage-of-the-fund method is particularly appropriate here given the
17 favorable result achieved.

18 13. Class Counsel's compensation for the services rendered was wholly contingent on
19 their success. Demonstrating Class Counsel's commitment to this Action, they have devoted
20 more than 3,552 hours to litigating the Action resulting in a lodestar of \$1,841,533.50. I have
21 confirmed that Class Counsel's lodestar is based upon their normal hourly rates that are paid by
22 clients for similar hourly engagements and have been regularly approved by courts throughout
23 the United States. Even before any additional post-approval time is considered, an award of one-
24 third of the Settlement Fund would represent a lodestar multiplier of 1.22.

25 14. Based upon past experience, Class Counsel will likely incur the equivalent of at
26 least an additional \$100,000 in time in connection with final approval proceedings and
27 administration of the Settlement, including responding to inquiries by members of the Settlement
28 Class, which occur on a daily basis. I have confirmed that Class Counsel's expenses are reflected

1 in the respective books and records maintained by each of the firms, and are an accurate record
 2 of the expenses incurred in this action. The time devoted by all counsel and the expenses incurred
 3 by all counsel in the prosecution of the litigation are set forth, respectively, in Exhibits “A” and
 4 “B” to this Declaration. I respectfully submit that all of these costs and expenses are reasonable
 5 and should be approved by the Court.

6 15. Miller Shah’s attorneys are experienced in class action litigation, including in
 7 ERISA class actions, and have recovered more than \$1 billion on behalf of their clients in class
 8 actions nationwide.² In ERISA class and representative actions, James E. Miller and I lead the
 9 Firm’s practice and, over the past decade, we have served as lead counsel in some of the most
 10 significant ERISA cases prosecuted throughout the United States on behalf of retirement plans
 11 and their participants, including: *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, No.
 12 3:11-CV-282 (D. Conn.) (class action on behalf of retirement plans tried before the Honorable
 13 William G. Young after substantial proceedings before this Court and resulting in a settlement
 14 valued at over \$400 million for a class of retirement plans); *Ferguson v. Ruane Cunniff &*
 15 *Goldfarb*, No. 1:17-cv-06685-ALC-BCM (S.D.N.Y.) (\$124.5 million in proposed common fund
 16 settlements pending final approval); *Phones Plus, Inc. v. Hartford Fin. Servs., Inc.*, No. 3:06-cv-
 17 01835 (D. Conn.) (class action settlement with value of over \$80 million on behalf of class of
 18 retirement plans); *Garthwait v. Eversource Energy Service Co.*, No. 3:20-cv-00902 (D. Conn.)
 19 (\$15 million settlement for class of plan participants); *Boley v. Universal Health Servs.*, No. 2:20-
 20 cv-02644 (E.D. Pa.) (\$12.5 million settlement for class of plan participants); *Golden Star, Inc. v.*
 21 *Mass Mutual Life Ins. Co.*, No. 3:11-cv-30235 (D. Mass.) (\$9.475 million class action settlement
 22 on behalf of class of retirement plans); *Butler National v. Union Central Life Ins. Co.*, No. 1:12-
 23 cv-177 (S.D. Ohio) (\$2.25 million common fund established for class of retirement plans and
 24 other relief to class valued at over \$15 million); *Terraza v. Safeway, Inc.*, No. 4:16-cv-03994
 25 (N.D. Cal.) (settlement of \$8.5 million for class of plan participants); *Jones v. Coca-Cola*

27 ² See [https://millershah.com/practice-areas/employee-benefits-fiduciary-compliance/401-k-fee-](https://millershah.com/practice-areas/employee-benefits-fiduciary-compliance/401-k-fee-litigation-gatekeeper-cases/)
 28 [litigation-gatekeeper-cases/](https://millershah.com/practice-areas/employee-benefits-fiduciary-compliance/401-k-fee-litigation-gatekeeper-cases/).

1 *Consolidated, Inc.*, No. 3:20-cv-00988 (W.D.N.C.) (\$3.5 million class action settlement). In
 2 addition, in 2020, Mr. Miller was named whistleblower lawyer of the year by Taxpayers Against
 3 Fraud, a well-respected nonprofit association, for his work on behalf of the United States and
 4 certain states in recovering \$678 million in *U.S. ex rel. Bilotta v. Novartis Pharmaceuticals Corp.*,
 5 No. 11 Civ. 0071 (PGG), and \$54 million in *U.S. ex rel. Arnstein, et al. v. Teva Pharmaceuticals,*
 6 *et al.*, No. 13 Civ. 3702 (CM), both of which settled on the eve of trial in the Southern District of
 7 New York before Judge Gardephe and Chief Judge McMahon, respectively, and demonstrate
 8 Miller Shah's ability to handle exceptionally complex litigation. Thus, the attorneys at Miller
 9 Shah have the experience, resources, expertise, and aptitude necessary to properly represent the
 10 interests of the Plan and the Settlement Class in this Action. Since the inception of this Action,
 11 Miller Shah has acted cooperatively with Capozzi Adler, P.C., a firm with in-depth experience
 12 litigating ERISA class actions similar to the Action.

13 16. Capozzi Adler, whose attorneys have decades of complex litigation experience,
 14 strives to obtain the best results for class members in every circumstance. They have successfully
 15 defeated motions to dismiss similar allegations in numerous ERISA actions. *See, e.g., Kendall et*
 16 *al v. Pharmaceutical Product Development, LLC*, No. 7:20-cv-00071-D (ECF No. 28) (E.D.N.C.
 17 March 31, 2021) (upholding allegations that plan fiduciaries selected higher-priced identical share
 18 classes and overpaid for recordkeeping); *Davis v. Magna Int'l of America, Inc.*, 2021 WL
 19 1212579 (E.D. Mich. March 31, 2021) (same). They have been successful at the appellate level
 20 resulting in the reversal of dismissed actions. *See, e.g., Kong et al. v. Trader Joe's Co.*, No. 20-
 21 56415 (9th Cir. Apr. 15, 2022) (reversing district court dismissal of ERISA excessive fee action);
 22 *Davis et al. v. Salesforce.com. Inc. et al.*, No. 21-15867 (9th Cir. Apr. 8, 2022) (same). And, they
 23 have engaged in successful settlement negotiations and mediations in ERISA actions, recovering
 24 millions of dollars for their clients and class members. *See, e.g., Buescher, et al., v. Brenntag*
 25 *North America, Inc., et al.*, No. 5:20-cv-00147 (E.D. Pa. 2020) (recovered \$2.3 million class
 26 settlement); *Pinnell, et al., v. Teva Pharmaceuticals USA, Inc., et al.*, No. 2:19-cv-05738-MAK
 27 (E.D. Pa. 2019) (settlement in the amount of \$2.55 million); *Freck v. Cerner Corp., et al.*, No.
 28 4:20-CV-00043-BCW (W.D. Mo. 2020) (recovered \$4.05 million class settlement). Accordingly,

1 the attorneys at Capozzi Adler have the requisite experience and resources to properly represent
2 the interests of the Plan and the Settlement Class in this case.

3 17. Defendants are represented by very experienced counsel, Morgan, Lewis &
4 Bockius LLP, which spared no effort in the defense of their clients. Defendants' counsel
5 vigorously defended their clients, insisted they had no liability and were ready to proceed with
6 further litigation if a settlement was not reached. In the face of this opposition, Class Counsel
7 developed Plaintiffs' case so as to persuade Defendants to settle the Action on a basis favorable
8 to the Class under the circumstances.

9 18. This litigation was undertaken by Class Counsel on a wholly-contingent basis.
10 From the outset, Class Counsel understood that they were embarking on a complex, expensive,
11 and lengthy litigation with no guarantee of ever being compensated for the enormous investment
12 of time and money the case would require. In undertaking that responsibility, Class Counsel was
13 obligated to ensure that sufficient attorney and paraprofessional resources were dedicated to the
14 prosecution of this action and that funds were available to compensate staff and the considerable
15 costs which a case such as this entails.

16 19. Because of the nature of a contingent practice in the area of employment benefits
17 litigation, where cases are predominantly large cases lasting several years, not only do contingent
18 litigation firms have to pay regular overhead, but they also have to advance the expenses of the
19 litigation. This does not even take into consideration the possibility of no recovery. As discussed
20 above, from the outset, this action presented a number of risks and uncertainties which could have
21 prevented any recovery whatsoever. It is wrong to assume that law firms handling complex
22 contingent litigation such as this always win. Tens of thousands of hours have been expended in
23 losing efforts. The "risks of litigation" factor employed by courts in analyzing fee requests is not
24 an empty phrase. There was a demonstrable risk that the Class and its counsel would receive
25 nothing. It took hard and diligent work by skilled counsel to develop facts and theories which
26 persuaded Defendants to enter into serious settlement negotiations.

27 20. Based upon the claims remaining in the case, Plaintiffs' experts have estimated the
28 range of realistic and supportable damages to be from \$3,943,016.50 million to \$15,940,213.00

1 million depending upon the methodology and assumptions employed, with a midpoint of
2 \$9,941,637.25. While figures in this range are defensible, the likelihood of establishing the higher
3 figure faces more challenges than the lower figure. Indeed, if the Class Action proceeded through
4 trial, Defendants would likely challenge the loss calculation methodology and interest rates
5 applied (not to mention challenges to causation and other elements of Plaintiffs' claims).
6 Accordingly, the Settlement provides monetary relief of approximately 68% of the mid-point of
7 the range of realistically recoverable losses.

8 21. When Class Counsel undertook to act for Plaintiffs and the Plan's participants and
9 beneficiaries in this action, it was with the knowledge that they would spend many hours of hard
10 work against some of the best defense lawyers in the United States, with no assurance of obtaining
11 any compensation for their efforts. The benefits conferred on the class by this Settlement are
12 particularly noteworthy in that a Settlement Fund worth \$6,750,000 was obtained for the
13 Settlement Class despite the existence of substantial risks of no recovery in light of the vigorous
14 defense mounted by Defendants, and the practical obstacles to obtaining a larger recovery after
15 trial, and the likelihood of appeals.

16 22. To the best of my understanding, notice of the Settlement has been distributed to
17 the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005.

18 23. Strategic Claims Services has provided periodic updates of expenditures made in
19 connection with administration of the Settlement, and it has provided all information requested
20 by the Parties or their counsel.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed this 2nd day of October, 2023 at Chester, Connecticut.

23
24 /s/ Laurie Rubinow
Laurie Rubinow

EXHIBIT A**Lodestar Chart**

<u>Timekeeper</u>	<u>Role</u>	Billable Hours	Hourly Rate	Total Lodestar
Alec J. Berin	Associate Attorney	221.30	\$550.00	\$121,715.00
Jillian M. Boyce	Supervising Paralegal	134.70	\$275.00	\$37,042.50
Ho Yin Cheung	Project Analyst	244.80	\$250.00	\$61,200.00
Elena M. DiBattista	Paralegal	119.50	\$250.00	\$29,875.00
Jonathan A. Dilger	Research Director	419.30	\$500.00	\$209,650.00
Betsy A. Ferling	Paralegal	216.40	\$250.00	\$54,100.00
Daniel L. Germain	Partner (Rossman & Germain)	34.70	\$695.00	\$24,116.50
Linda P. Gussler	Paralegal (Capozzi & Adler)	35.40	\$350.00	\$12,390.00
Mark P. Gyandoh	Partner (Capozzi & Adler)	20.50	\$855.00	\$17,527.50
Gabrielle P. Kelerchian	Associate (Capozzi & Adler)	23.20	\$550.00	\$12,760.00
Jacob Levin	Project Analyst	47.80	\$250.00	\$11,950.00
James E. Miller	Partner	148.90	\$1,100.00	\$163,790.00
Christine Mon	Paralegal	32.10	\$250.00	\$8,025.00
Sue Moss	Paralegal	81.20	\$250.00	\$20,300.00
Michael Ols	Associate	52.40	\$375.00	\$19,650.00
Rita Osmani	Law Clerk	79.60	\$275.00	\$21,890.00
Donald R. Reavey	Partner (Capozzi & Adler)	145.40	\$855.00	\$124,317.00
Laurie Rubinow	Partner	181.90	\$850.00	\$154,615.00
Marialisa Samo	Paralegal	99.80	\$250.00	\$24,950.00
James C. Shah	Partner	97.70	\$975.00	\$95,257.50
Kolin C. Tang	Partner	437.40	\$750.00	\$328,050.00
Casey T. Yamasaki	Associate	678.50	\$425.00	\$288,362.50
Totals		3552.50		\$1,841,533.50

EXHIBIT B**Expense Chart**

Miller Shah LLP Expenses	
<u>Category</u>	<u>Amount</u>
Computer Research/Access/Database	\$2,583.50
Experts/Investigators	\$103,846.50
Filing/Court Fees/Process Fees	\$1,686.00
Internal Copying	\$1,090.21
Mediation	\$8,975.00
Postage/Delivery	\$83.80
Telephone	\$99.89
Miller Shah Total	\$118,364.90
Co-Counsel Expenses	\$1,021.12
Total Expenses	\$119,386.02